

1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others
3 similarly situated seeking damages and any other available legal or equitable
4 remedies resulting from the illegal actions of ABC GLOBAL SYSTEMS, INC.
5 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on
6 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
7 Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, thereby invading
8 Plaintiff’s privacy and causing her to incur unnecessary and unwanted expenses.

9 **JURISDICTION & VENUE**

10 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
11 a resident of California, seeks relief on behalf of a Class, which will result in at
12 least one class member belonging to a different state than that of Defendant, a New
13 York corporation. Plaintiff also seeks up to \$1,500.00 in damages for each call in
14 violation of the TCPA, which, when aggregated among a proposed class in the
15 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
16 Therefore, both diversity jurisdiction and the damages threshold under the Class
17 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

18 3. Venue is proper in the United States District Court for the Central
19 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
20 business within the State of California and Plaintiff resides within the County of
21 Los Angeles.

22 **PARTIES**

23 4. Plaintiff, TERRY FABRICANT (“Plaintiff”), is a natural person
24 residing in Winnetka, California and is a “person” as defined by 47 U.S.C. § 153
25 (39).

26 5. Defendant, ABC GLOBAL SYSTEMS, INC. (“Defendant”), is a
27 credit card processing and small business financing company, and is a “person” as
28 defined by 47 U.S.C. § 153 (39).

1 6. The above named Defendant, and its subsidiaries and agents, are
2 collectively referred to as “Defendants.” The true names and capacities of the
3 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
4 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
5 names. Each of the Defendants designated herein as a DOE is legally responsible
6 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
7 Complaint to reflect the true names and capacities of the DOE Defendants when
8 such identities become known.

9 7. Plaintiff is informed and believes that at all relevant times, each and
10 every Defendant was acting as an agent and/or employee of each of the other
11 Defendants and was acting within the course and scope of said agency and/or
12 employment with the full knowledge and consent of each of the other Defendants.
13 Plaintiff is informed and believes that each of the acts and/or omissions complained
14 of herein was made known to, and ratified by, each of the other Defendants.

15 **FACTUAL ALLEGATIONS**

16 8. Beginning in or around May of 2018, Defendant contacted Plaintiff
17 on Plaintiff’s cellular telephone number ending in -1083, in an attempt to solicit
18 Plaintiff to purchase Defendant’s services.

19 9. Defendant used an “automatic telephone dialing system” as defined
20 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

21 10. Defendant contacted or attempted to contact Plaintiff from telephone
22 numbers confirmed to belong to Defendant, including without limitation (518) 868-
23 7079.

24 11. Defendant’s calls constituted calls that were not for emergency
25 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

26 12. Defendant’s calls were placed to telephone number assigned to a
27 cellular telephone service for which Plaintiff incurs a charge for incoming calls
28 pursuant to 47 U.S.C. § 227(b)(1).

1 13. During all relevant times, Defendant did not possess Plaintiff's "prior
2 express consent" to receive calls using an automatic telephone dialing system or an
3 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
4 227(b)(1)(A).

5 14. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
6 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

7 15. Upon information and belief, and based on Plaintiff's experiences of
8 being called by Defendant despite having no prior relation to Plaintiff whatsoever,
9 and at all relevant times, Defendant failed to establish and implement reasonable
10 practices and procedures to effectively prevent telephone solicitations in violation
11 of the regulations prescribed under 47 U.S.C. § 227(c)(5).

12 **CLASS ALLEGATIONS**

13 16. Plaintiff brings this action individually and on behalf of all others
14 similarly situated, as a member of the proposed class (hereinafter, "The Class"),
15 defined as follows:

16 All persons within the United States who received any
17 solicitation/telemarketing telephone calls from
18 Defendant to said person's cellular telephone made
19 through the use of any automatic telephone dialing
20 system or an artificial or prerecorded voice and such
21 person had not previously consented to receiving such
22 calls within the four years prior to the filing of this
23 Complaint

24 17. Plaintiff represents, and is a member of, The Class, consisting of all
25 persons within the United States who received any solicitation/telemarketing
26 telephone calls from Defendant to said person's cellular telephone made through
27 the use of any automatic telephone dialing system or an artificial or prerecorded
28 voice and such person had not previously not provided their cellular telephone
number to Defendant within the four years prior to the filing of this Complaint.

 18. Defendant, its employees and agents are excluded from The Class.

1 Plaintiff does not know the number of members in The Class, but believes the
2 Class's members number in the thousands, if not more. Thus, this matter should
3 be certified as a Class Action to assist in the expeditious litigation of the matter.

4 19. The Class is so numerous that the individual joinder of all of its
5 members is impractical. While the exact number and identities of The Class
6 members are unknown to Plaintiff at this time and can only be ascertained through
7 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
8 The Class includes thousands of members. Plaintiff alleges that The Class
9 members may be ascertained by the records maintained by Defendant.

10 20. Plaintiff and members of The Class were harmed by the acts of
11 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
12 and The Class members via their cellular telephones thereby causing Plaintiff and
13 The Class members to incur certain charges or reduced telephone time for which
14 Plaintiff and The Class members had previously paid by having to retrieve or
15 administer messages left by Defendant during those illegal calls, and invading the
16 privacy of said Plaintiff and The Class members.

17 21. Common questions of fact and law exist as to all members of The
18 Class which predominate over any questions affecting only individual members of
19 The Class. These common legal and factual questions, which do not vary between
20 Class members, and which may be determined without reference to the individual
21 circumstances of any Class members, include, but are not limited to, the following:

- 22 a. Whether, within the four years prior to the filing of this
23 Complaint, Defendant made any telemarketing/solicitation call
24 (other than a call made for emergency purposes or made with
25 the prior express consent of the called party) to a Class member
26 using any automatic telephone dialing system or any artificial
27 or prerecorded voice to any telephone number assigned to a
28 cellular telephone service;

- 1 b. Whether Plaintiff and The Class members were damaged
2 thereby, and the extent of damages for such violation; and
3 c. Whether Defendant should be enjoined from engaging in such
4 conduct in the future.

5 22. As a person that received telemarketing/solicitation calls from
6 Defendant using an automatic telephone dialing system or an artificial or
7 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
8 claims that are typical of The Class.

9 23. Plaintiff will fairly and adequately protect the interests of the members
10 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
11 class actions.

12 24. A class action is superior to other available methods of fair and
13 efficient adjudication of this controversy, since individual litigation of the claims
14 of all Class members is impracticable. Even if every Class's member could afford
15 individual litigation, the court system could not. It would be unduly burdensome
16 to the courts in which individual litigation of numerous issues would proceed.
17 Individualized litigation would also present the potential for varying, inconsistent,
18 or contradictory judgments and would magnify the delay and expense to all parties
19 and to the court system resulting from multiple trials of the same complex factual
20 issues. By contrast, the conduct of this action as a class action presents fewer
21 management difficulties, conserves the resources of the parties and of the court
22 system, and protects the rights of each Class member.

23 25. The prosecution of separate actions by individual Class members
24 would create a risk of adjudications with respect to them that would, as a practical
25 matter, be dispositive of the interests of the other Class members not parties to such
26 adjudications or that would substantially impair or impede the ability of such non-
27 party Class members to protect their interests.

28 26. Defendant has acted or refused to act in respects generally applicable

1 to The Class, thereby making appropriate final and injunctive relief with regard to
2 the members of the Classes as a whole.

3 **FIRST CAUSE OF ACTION**

4 **Negligent Violations of the Telephone Consumer Protection Act**

5 **47 U.S.C. §227(b).**

6 **On Behalf of The Class**

7 27. Plaintiff repeats and incorporates by reference into this cause of action
8 the allegations set forth above at Paragraphs 1-28.

9 28. The foregoing acts and omissions of Defendant constitute numerous
10 and multiple negligent violations of the TCPA, including but not limited to each
11 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
12 *47 U.S.C. § 227 (b)(1)(A)*.

13 29. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
14 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
15 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

16 30. Plaintiff and The Class members are also entitled to and seek
17 injunctive relief prohibiting such conduct in the future.

18 **SECOND CAUSE OF ACTION**

19 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
20 **Act**

21 **47 U.S.C. §227(b)**

22 **On Behalf of The Class**

23 31. Plaintiff repeats and incorporates by reference into this cause of action
24 the allegations set forth above at Paragraphs 1-28.

25 32. The foregoing acts and omissions of Defendant constitute numerous
26 and multiple knowing and/or willful violations of the TCPA, including but not
27 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
28 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

33. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiff and The Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

34. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and The Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and The Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).

- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

35. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 12th Day of October, 2018.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff